



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JAMES TRACEY LEE,
Petitioner,

vs.

WARDEN, EVANS CORRECTIONAL
INSTITUTION,
Respondent.

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CIVIL ACTION NO. 4:07-2742-HFF-TER

ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondent's motion for summary judgment be granted in its entirety, and the petition be dismissed without an evidentiary hearing. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 13, 2008, and the Clerk of Court entered Petitioner's objections to the Report on June 4, 2008. The Court has reviewed the objections, but finds them to be without merit. Simply stated, and as observed by the Magistrate Judge, "[b]ased on the fact that [P]etitioner has not shown any extraordinary circumstances to warrant equitable tolling, . . . the petition is barred by the statute of limitations." (Report 17.) Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Respondent's motion for summary judgment be **GRANTED** in its entirety, and the petition be **DISMISSED** without an evidentiary hearing.

IT IS SO ORDERED.

Signed this 11th day of June, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 (thirty) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.